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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 352

J. LAURITZEN,

Petitioner,

—against—

ROBERT SPANN,

Respondent.

BRIEF ON BEHALF OF AMERICAN MERCHANT MARINE INSTITUTE, INC., PACIFIC AMERICAN STEAMSHIP ASSOCIATION and LAKE CARRIERS' ASSOCIATION, AS AMICI CURIAE

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Consent of Parties

By stipulation between Petitioner and Respondent, dated July 27, 1965, and filed concurrently herewith, consent has been given to file the within Brief Amicus.

Statement of Interest

AMERICAN MERCHANT MARINE INSTITUTE, INC., has a membership of 42 steamship companies, operating cargo, tanker, collier and passenger vessels under the American Flag. The companies have a total vessel tonnage of more than 5,606,500 gross tons, representing about 55% of the American Flag merchant marine operating in foreign and domestic trade. The membership representatives have approved the positions taken herein by counsel for the Institute.

PACIFIC AMERICAN STEAMSHIP ASSOCIATION, is a non-profit corporation, organized under the laws of the

State of California. Its members own and operate merchant vessels under the American Flag, having a total tonnage of approximately 1,000,000 gross tons. These vessels constitute over 90% of all domestic merchant vessels now in service, whose owners have headquarters on the Pacific Coast. The membership representatives have approved of the position taken herein by the Association's counsel.

LAKE CARRIERS' ASSOCIATION, is a voluntary organization of owners and operators of vessels under the American Flag engaged in commerce on the Great Lakes. It has 25 member companies with 226 merchant vessels presently enrolled in the Association. These vessels have an aggregate of more than 1,784,000 gross tons, constituting 97% of all commercial vessels under the American Flag now engaged in domestic commerce on the Great Lakes. The membership representatives have approved the position taken herein by the Association's counsel.

Taken together, the three aforesaid associations may be said to represent the voice of the organized Merchant Marine of the United States, raised in support of the Petition.

Argument of Amici Curiae

The undersigned Associations have submitted this Brief to express their concern over the decision of the Court of Appeals, which not only breaks through the existing limits of maritime jurisdiction, but extends shipowners' liability to a hitherto unrecognized area, and to an uncertain degree.

For the first time, a shipowner may be held liable to a shore-side worker for an alleged defect originating in shore-side equipment, unconnected to the vessel and resulting in a shore-side injury.

The decision below imposes an absolute non-delegable responsibility on the shipowner for equipment, not adopted by the ship as in *Alaska Steamship Co.* v. *Petterson,* 347 U. S. 396 (1954) or used on the ship *Italia-Societa per Azioni di Navigazione* v. *Oregon Stevedoring Co., Inc.,* 376 U. S. 315 (1964) or issuing from the ship as in *Gutierrez* v. *Waterman Steamship Corp.,* 373 U. S. 206 (1963), but wholly outside the vessel owner's sphere of control.

Apart from any power or even opportunity to remedy existing pier conditions, not the least of the complications attendant upon such shore-side accidents, is the likelihood that shipowner's personnel will not witness, hear of or investigate them—a favorable climate for the breeding of fraudulent and collusive claims. The language of Mr. Justice Holmes in *Gooch* v. *Oregon Line Railroad Company,* 258 U. S. 22, 25 (1922) as to the desirability of prompt notice of accidents is just as applicable here for, as he said, the "practice of fraud is too common to be ignored."

With the present division of the Circuits, as stated in the Petition, it would now appear that the Ninth Circuit would unite with the Third Circuit as to the shipowners' responsibility for shore-side men and equipment, while the Sixth Circuit, Second Circuit and probably the Fifth Circuit (*Kent* v. *Shell Oil Company,* 286 F. 2d 746 (1961)) would hold to the contrary.

The undersigned spokesmen for the maritime industry can find no support in precedent, theory or policy for the decision below which has enlarged the maritime jurisdiction and shipowner's liability beyond the existing lines as exemplified in the decisions of the Second, Fifth and Sixth Circuits.

At the present time there exists irreconcilable conflict among certain of the Circuits, and the results of litigation vary according to the particular Circuit in which the action

may have been brought. The maritime industry would want the authoritative voice of this Court to speak out on this subject and restore uniformity to the maritime law.

CONCLUSION

The undersigned Associations representing virtually the entire maritime industry of the United States, respectfully pray that the Petition for a Writ of Certiorari be granted to resolve the important foregoing questions and those stated in the Petition, or in the alternative, that the Court reverse the Court of Appeals on the Petition and reinstate the decision of the District Court.

Respectfully submitted,

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Certificate of Service

I, Cornelius P. Coughlan, one of counsel for American Merchant Marine Institute, Inc., Pacific American Steamship Association and Lake Carriers' Association, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the day of July, 1965, I served copies of the foregoing Brief on counsel for all parties of record by mailing copies of said Brief in sealed envelopes, deposited in the United States Mail at New York, New York, with postage pre-paid and addressed as follows:

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